

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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RICHARD F. LEE and AUNETTA M.
ROACH,

Plaintiffs,

v.

SIERRA PACIFIC MORTGAGE
COMPANY; et al.,

Defendants.

3:09-cv-0590-LRH-RAM

ORDER

Before the court is plaintiffs Richard F. Lee and Aunetta M. Roach's ("the plaintiffs") motion to remand filed on October 7, 2009. Doc. #4¹. Defendants filed an opposition on October 23, 2009. Doc. #19. Thereafter, plaintiffs filed a reply on November 4, 2009. Doc. #22.

Also before the court is plaintiffs' motion to stay filed on October 13, 2009. Doc. #8.

I. Facts and Procedural History

On December 29, 2006, plaintiffs purchased real property through a mortgage and note executed by defendant Sierra Pacific Mortgage Company. Plaintiffs defaulted on their mortgage and defendants initiated foreclosure proceedings.

Subsequently, on September 1, 2009, plaintiffs filed a complaint in state court alleging fourteen separate causes of action against defendants. Doc. #1, Exhibit 1. Defendants removed the

¹ Refers to the court's docket entry number.

1 matter to federal court on federal question grounds. Doc. #1. Thereafter, plaintiffs filed the present
2 motion to remand. Doc. #4.

3 **II. Legal Standard**

4 Under 28 U.S.C. § 1441, “any civil action brought in a State court of which the district
5 courts of the United States have original jurisdiction, may be removed by the defendant or the
6 defendants, to the district court of the United States for the district and division embracing the
7 place where such action is pending.” 28 U.S.C. § 1441(a).

8 Removal of a case to a United States district court may be challenged by motion. 28 U.S.C.
9 § 1441(c). A federal court must remand a matter if there is a lack of jurisdiction. *Id.* Removal
10 statutes are construed restrictively and in favor of remanding a case to state court. *See Shamrock*
11 *Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108-09 (1941); *Gaus v. Miles, Inc.*, 980 F.2d 564, 566
12 (9th Cir. 1992). On a motion to remand, the removing defendant faces a strong presumption against
13 removal, and bears the burden of establishing that removal is proper. *Gaus*, 980 F.2d at 566-67;
14 *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 403-04 (9th Cir. 1996).

15 **III. Discussion**

16 A case may be removed to federal court if the action arises under federal law. *See* 28 U.S.C.
17 § 1331; 28 U.S.C. § 1441. A case arises under federal law if the complaint establishes either that
18 federal law created the cause of action, or that the plaintiff’s right to relief “requires resolution of a
19 substantial question of federal law.” *Franchise Tax Bd. of Cal v. Constr. Laborers Vacation Trust*
20 *for S. Cal.*, 463 U.S. 1, 13 (1983); *see also, Caterpillar Inc. v. Williams*, 482 U.S. 386, 382 (1987).

21 Here, plaintiffs argue that there is no federal question because all of their claims are rooted
22 in either state law or common law. Thus, according to plaintiffs, there are no federal causes of
23 action supporting removal.

24 However, federal question jurisdiction will lie over state law claims that implicate
25 significant federal issues. *Grable & Sons Metal Prod. v. Darue Engineering & MFG.*, 545 U.S. 308,
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1 312 (2005). In their complaint plaintiffs repeatedly reference defendants' violations of federal laws
2 including defendants' concealment of information in violation of federal securities and banking
3 laws. Further, plaintiffs' thirteenth cause of action for conspiracy directly references the Truth in
4 Lending Act, the Real Estate Settlement Procedures Act, and the Home Ownership Protection Act.
5 See Doc. #1, Exhibit 1.

6 Plaintiffs argue that these are "incidental" references to federal laws referred to "only as a
7 compilation to the state violations since much of that languages may be the same." Doc. #22.
8 However, the court finds that plaintiffs' references are not incidental; they are part of the requisite
9 framework for plaintiffs' claims. Plaintiffs' conspiracy claim necessarily depends on the resolution
10 of federal law because in order to have conspired to violate plaintiffs' rights defendants must have
11 first violated the federal statutes at issue. Thus, on the face of plaintiffs' complaint, there are
12 questions of federal law establishing federal question jurisdiction. See e.g., *California ex. Rel*
13 *Lockyer v. Dynergy, Inc.*, 375 F.3d 831, 841 (9th Cir. 2004) (finding that removal was proper
14 because the state causes of action turned on the defendant's compliance with federal regulations).

15 IT IS THEREFORE ORDERED that plaintiffs' motion to remand (Doc. #4) is DENIED.

16 IT IS FURTHER ORDERED that plaintiffs' motion to stay pending the motion to remand
17 (Doc. #8) is DENIED as moot.

18 IT IS SO ORDERED.

19 DATED this 14th day of January, 2010.



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22 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE
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